

December 20, 2018

Mr. Ford called the Meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m.

Members Present: Mr. Mazza, Mr. Neary, Mr. Walchuk, Mr. Nace, Mr. Eschbach,, Mr. Kirkpatrick, Mr. Ford

Board Professionals Present: Atty. Mark Anderson, Robert Clerico, Andrea Malcolm, Eric DeRicco,

Members Absent: Mr. Kastrud, Mr. Stothoff, Mr. Sullivan

Others Present:

Powerco: Atty. Alan Lowcher, Chris Haebig, Christopher Nusser, Kelly O'Such,

Liberty Stone: Atty. Jay Thatcher, Michael Schlaefel, Bruce Feld,

KDAC: Atty. Jay Thatcher, Jack Guerin, John Madden, Tim Yorkovitch,

Board of Education: Atty. Sean Monaghan, Fred Stewart, Michael Fariello

Fallone: Atty. Steve Warner, James Mantz

Mr. Ford welcomed Daniel Petitt who was appointed as Alternate II at the December 5, 2018 Committee Meeting.

Open Public Meetings Act Notice: I would like to have placed in the minutes that the Open Public Meeting Requirements of Law have been satisfied by our notices dated February 1, 2018, as published in the Hunterdon County Democrat and January 31, 2018, as published in the Courier News and revised as of November 13, 2018. A copy of the Notice has also been posted on the Township Website, the Bulletin Board in the Municipal Building and a copy has been filed with the Municipal Clerk.

Approval of Minutes: Mr. Kirkpatrick made a motion to approve the minutes of the November 8, 2018 meeting. Mr. Mazza seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Mazza, Mr. Nace, Mr. Neary, Mr. Ford

Abstain: Mr. Walchuk, Mr. Eschbach

Powerco Partners LTD: Block 23, Lot 2.02, Route 173 West, Preliminary & Final Site Plan: Public

Hearing: Mr. Ford noted that a Use Variance had been granted previously for this site. He said that Committee Members Mazza and Neary were recusing themselves from this Board of Adjustment Hearing. Atty. Lowcher gave an overview of the Site Plan. He said applicant proposes a 10,000 square foot building with associated driveway access, parking, lighting, landscaping and an on-site well and septic system, storm water management, shop space with a parts and sales showroom on land Powerco owns. The proposed building will house the Kubota Dealership and the existing building will house the Case Dealership.

Atty. Lowcher asked that Chris Haebig, General Manager, Christopher Nusser, Engineer/Planner and Civil Engineer Kelly O'Such be sworn. They were sworn by Atty. Anderson. Messrs. Haebig, Nusser and O'Such provided information on their areas of expertise. Their credentials were acceptable to the Board.

Mr. Haebig described Powerco's operations. He said Powerco sells and services agricultural and construction equipment. Mr. Haebig addressed the issue of outdoor display of equipment. He indicated it was important that equipment was visible to potential customers. The display is changed with the seasons. In response to a question from Mr. Ford about the display, Mr. Haebig indicated Powerco minimizes showiness. Mr. Kirkpatrick asked about a history of violations. Mr. Haebig said to the best of his knowledge, there have been none. Mr. Ford asked for questions for Ms. Malcolm and/or Mr. Clerico. Ms. Malcolm commented on the proposed lighting. Mr. Haebig said Powerco wants the site to look professional as a reflection of their business.

Mr. Nusser displayed a Colorized Version of the Site Plan, prepared by his Office and dated December 20, 2018. It was marked Exhibit A-1. He said the 5.2 acre lot is located in the Planned Commercial District. The property had been a quarry. Because of topographic conditions, the proposed building will be in the southeastern portion of the property. Outdoor storage is proposed north of the building and parking to the west of the building. There will be a well, septic system and propane tanks. Electricity, telephone and cable will be supplied from Route 173. The steep slopes are man-made. Mr. Nusser mentioned storm water. Mr. O'Such said the infiltration storm water basin would be located in the southeast part of the site. He said State and Local Regulations define this as a major project and applicant must comply with those Rules. Mr. Nusser described the proposed lighting and landscaping. Some relief will be sought from the Ordinance lighting requirements. He said there are no floodplains or streams on the property.

Atty. Lowcher asked that Ms. Malcolm's memorandum dated November 5, 2018 and Mr. Clerico's November 5, 2018 Technical Review Letter be addressed. Mr. Nusser explained that topographic conditions on the site were the reason structures were proposed outside of the setbacks. He said the fencing would be relocated within the setback. The propane tanks will be relocated or eliminated from the Plan. He said eighteen parking spaces are proposed with five overflow spaces. Mr. Nusser said the loading and trash enclosure areas are located to the rear of the building. Atty. Lowcher referenced a concern about the paved and gravel areas in the rear of the existing Powerco building. Mr. Nusser said the paved area is for outdoor storage of equipment. The graveled area will be removed from the Plan. He explained why access from Route 173 instead of Rupell Road was appropriate and said a Minor Access Permit has been submitted to NJDOT. Applicant will be meeting with DOT.

Mr. Nusser addressed lighting at the site. He said security lighting would be twenty-four hours a day. Other lights would be on from 7:00 a.m. to 8:00 p.m. Mr. Kirkpatrick asked about the type of fence. He suggested an architectural appealing fence in the front of the building instead of chain link. Mr. Nusser said applicant would comply. Rear fencing would remain as chain link. Mr. Clerico had a question related to the gate and adequacy of vehicles to negotiate queuing. Mr. Nusser will research that matter. Ms. Malcolm had a concern about the canopy. Mr. Nusser assured her inconsistencies would be addressed.

Mr. Nusser addressed Mr. Clerico's letter. He said the issue of the owner of Lot 1 utilizing the northwest corner of the subject site must be addressed. Mr. Nusser said vegetation and signage will be installed to create a barrier between the Lots. Regarding the wall section on Sheet #11 the wall will be 4 feet high and structural calculations will be submitted. Mr. Nusser referenced Mr. DeRicco's letter suggesting that

applicant monitor on-site excavations for carbonate rock and notify the Township as required. Mr. Nusser addressed the SWM basin and Mr. Clerico's requirement for an inlet. Mr. Nusser explained why applicant thought a Groundwater Mounding Analysis was not necessary and will provide pertinent documentation to Mr. Clerico.

Mr. Nusser referenced the proposed septic system for which approval is required by the Hunterdon County Health Department. He also referenced the Electric Transformer that could be located within the front yard setback. Mr. Nusser mentioned the L.O.I. Mr. Kirkpatrick said the L.O.I. issue could be addressed by a Wetlands Scientist determining the presence or absence of wetlands and submitting that information to the Board.

Applicant agreed to provide an Aquifer Test. If water was unobtainable from the Site, applicant would attempt to connect to the well on the adjoining property.

Mr. Kirkpatrick asked that positive and negative criteria for variances be stated. Mr. Nusser said there are hardship variances for features located within the front yard including the storm water basin which is driven by topographic conditions, fence and parking, the benefits of granting the relief outweigh the negatives of constructing Ordinance required parking by reducing impervious coverage and potential impact on steep slopes. Applicant proposes stabilizing any disturbance of steep slopes.

Atty. Anderson asked for clarification regarding a potential change of use for parking. Atty. Lowcher said if the use changed, an applicant could submit a request to the Zoning Officer for his or her approval to utilize banked parking. Mr. Anderson said it would be difficult to impose a condition on a future permitted use. Mr. Ford asked if applicant would be willing to modify the Plan to provide a banked parking area. Mr. Nusser indicated that would be provided in the storage area. Atty. Anderson asked Ms. Malcolm and Mr. Clerico if this were a permitted use would the storage area no longer be required. It was determined that a future applicant could apply to the Zoning Officer to use the storage area for parking if the use was permitted.

Mr. Ford asked for questions from the Public. There being none, he said a motion would be in order.

Motion: Mr. Kirkpatrick made a motion to approve the application contingent upon the items discussed above. Mr. Eschbach seconded the motion.

Ayes: Mr. Kirkpatrick, Mr. Eschbach, Mr. Walchuk, Mr. Nace, Mr. Ford

Mr. Ford announced the Board would take a break. (8:30 p.m.) The meeting reconvened at 8:37 p.m.

Liberty Stone & Aggregates – Clinton Quarry: Block 22, Lot 30, Frontage Road: 2019 Quarry License

Renewal: Atty. Jay Thatcher was present on behalf of applicant. Quarry Representatives Michael Schlaefer and Bruce Feld were sworn by Atty. Anderson. Mr. Thatcher referenced Mr. Clerico's letter of December 16, 2018. Mr. Schlaefer addressed items of concern in the letter, including a 2nd sign, proposed structure, fencing, stockpiled topsoil, a reclaimed quarry area, Sea Storage Boxes, storage area, an updated aerial photo, the status of the LOI, Insurance Certificate and compliance with Hunterdon County Soil Conservation District. Mr. Kirkpatrick emphasized that applicant should obtain a

status report from their environmental consultant, Dr. Crow. The 2nd sign should be removed or proof submitted that approval was granted by the Zoning Officer. Structures are not part of this Quarry License application and require a site plan.

Atty. Anderson understood that the Quarry Ordinance Standards have been met. He said if the Board agrees, they would approve the application and recommend that the Municipal Clerk issue the License. Mr. Ford noted that the Insurance Certificate must be approved by the Municipal Attorney.

Motion: Mr. Kirkpatrick made a motion to approve the License and direct the Municipal clerk to issue the Quarry License for 2019. Mr. Walchuk seconded the motion.

Vote: Ayes, Mr. Kirkpatrick, Mr. Walchuk, Mr. Mazza, Mr. Neary, Mr. Nace, Mr. Eschbach, Mr. Ford

KDAC, LLC: Block 12, Lot 1.04, 96 Route 173 West: Appeal of Zoning Officer's Denial: Group LLC: Atty. Jay Thatcher was present on behalf of applicant. He said there would be no change in the use of the property. Mr. Thatcher introduced witnesses Property Owner Jack Guerin, Planner John Madden and KDAC Employee Tim Yorkovitch. They were sworn by Atty. Anderson. Atty. Thatcher said KDAC is the Contract Purchaser. Applicant applied for a zoning permit; however it was denied by the Zoning Officer.

Atty. Anderson outlined the details of the application. He said applicant contends the property is uniquely suited to the proposed use. Mr. Anderson said that is not a relevant issue. Applicant also said the proposed use is similar to the use of prior tenants. Mr. Anderson said it would be relevant only if one or the other of two tests was met. He said if the Board finds that the use is essentially identical to a prior approved use it would be grandfathered. Atty. Anderson said the 1999 Resolution contemplated multiple uses on the site. The Resolution states that each use must be permitted.

Atty. Anderson referenced the questions the Board needs to address. Is the use grandfathered or is the use permitted in the District? He asked Ms. Malcolm for input. Ms. Malcolm indicated in her report dated December 31, 2018 that a use variance would be required for the proposed use.

Mr. Kirkpatrick asked for a discussion about the proposed uses prior to presentation of the history of the site. Atty. Thatcher said Mr. Yurkovitch could provide that information. Mr. Yurkovitch said KDAC is a material handling, assembly, sales and service business. Customer vehicles would be stored outside for a period of two to three days. Mr. Yurkovitch displayed an Exhibit dated December 20, 2018.

It was marked A-1. Atty. Anderson asked about information submitted to the Zoning Officer in order for him to make a decision. Mr. Ford referenced the zoning application including the description of proposed on-site functions. Atty. Thatcher recited the list of proposed uses that included administrative, accounting, bookkeeping, receptionist, sales, leasing and sales of cranes, forklifts, sheetrock, delivery trucks and various accessory related products, repair warehouse, maintenance of cranes, fabrication and light assembly of pre-manufactured components and equipment. All on-site functions will be under the direction of the General Operations Manager and during regular business hours from 7:00 a.m. until 5:00 p.m. Most work will be inside the building. Ms. Malcolm mentioned the permitted uses listed in her report. Mr. Kirkpatrick said the Board needs to determine if the permitted

uses were grandfathered. Atty. Anderson said the decision should be based on what was submitted to the Zoning Officer. Mr. Kirkpatrick opined that Zoning Officer Graham made the right decision because he was not provided with enough information to make an informed decision.

Atty. Thatcher mentioned an approval granted by Mr. Graham in 2016 that was essentially the same as their request. Mr. Kirkpatrick reemphasized his statement about the inadequacy of information provided to Mr. Graham. Atty. Anderson said Ms. Malcolm stated there were at least three things that are not permitted. Mr. Ford said the Board is in the position that they would have to deny the appeal. Atty. Anderson noted that this is an appeal and not a decision as to what the Board might permit if a variance was requested. Atty. Thatcher said Mr. Gueren would like to testify since previous applications have been approved by the Zoning Officer. Mr. Ford said the applicant is obligated to provide that information to the Zoning Officer. Atty. Anderson said there is no information before the Board that suggests that the grandfather issue was described to Mr. Graham. Atty. Thatcher said he submitted an OPRA request to Mr. Graham. It was not part of the application. Mr. Ford mentioned the Zoning Denial was dated October 4, 2018. The OPRA request was dated November 11, 2018; therefore Mr. Graham did not have the information in October.

Atty. Thatcher said his client needs to know before December 31, 2018 that they can operate their business. Otherwise, the owners will sell the property to the State of New Jersey. Atty. Anderson asked Atty. Thatcher what in that statement was relevant to this Appeal. Mr. Thatcher thought the Board could consider if the use was grandfathered. Mr. Kirkpatrick reiterated his opinion that the Zoning Officer did not have adequate information. Atty. Anderson asked Atty. Thatcher if he had anything else to offer. Mr. Thatcher said "No".

Motion: Mr. Kirkpatrick made a motion to uphold the Zoning Officer's decision. Mr. Walchuk seconded the motion.

Vote: Ayes, Mr. Kirkpatrick, Mr. Walchuk, Mr. Nace, Mr. Eschbach, Mr.

Public Hearing: Union Township Board of Education (BOE) Block 21, Lot 7, 145 Perryville Road:

Amended Minor Subdivision: Atty. Sean Monaghan was present on behalf of applicant. Mr. Monaghan i

introduced witnesses Michael Fariello and Fred Stewart. They had been sworn at a previous Hearing. Mr. Fariello said that the Board of Education responded to the Planning Board's request that the Lot size be expanded. Atty. Monaghan asked Mr. Fariello to present positive criteria. He explained it would be beneficial to sell the property. He said the property would be restored to the tax roll. Preservation of the existing house, barn and shed would preserve the rural character of the Township. Mr. Fariello indicated it would. Atty. Monaghan said he had no further questions for Mr. Fariello.

Mr. Ford asked for questions from the Board and the Public. There were none

Atty. Monaghan asked Mr. Stewart to provide an overview of the application. Mr. Stewart said the property is in the Country Residential District. It consists of 26 acres that has the Union Township Elementary School and a residential dwelling, barn and a shed. The BOE proposes subdividing the house,

barn and shed and 3.638 acres from the 26-acre tract. Applicant proposes dedicating a 25 foot right-of-way on Perryville Road to the Township. Mr. Stewart said a setback variance is required for the barn and shed, a floor area variance is requested for the shed and a floor area and height variance is requested for the barn/garage. Atty. Monaghan asked Mr. Stewart if they considered asking the NJDEP to adjust the conservation easement. Mr. Stewart said "No". Applicant will move the sight triangle back to the property line outside of the right-of-way, as requested by Mr. Clerico.

Atty. Anderson understood applicant was agreeing to a condition that the barn would be used as an accessory structure to the single-family use. Atty. Monaghan said that was correct.

Mr. Ford asked for questions from the Public. There were none. He asked for a motion.

Motion: Mr. Kirkpatrick made a motion to approve the application with the condition referenced by Mr. Clerico that the DEP Permit be noted and attached to the Deed and the conservation easement be marked in the field in accordance with conditions of the Permit. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Walchuk, Mr. Nace, Mr. Eschbach, Mr. Ford

Fallone Group LLC Block 22, Lot 34, Perryville Road: Preliminary & Final Major Subdivision:

Administrative Discussion Only – No Testimony. Atty. Steve Warner was present on behalf of applicant. He said the application is fully conforming. The tract has fifty-five acres and applicant proposes construction of seventy-four twin-house residential lots and one open space lot consisting of thirty-seven acres, two detention basins, a water line, common septic system and four septic beds. Mr. Warner said the application was deemed complete on October 25, 2018. He spoke with the Board Attorney regarding January 28, 2019 as the deadline for the initial time to act. The Hearing was scheduled for December 6, 2018; however, because of two other Hearings that night, the Fallon Hearing was carried until December 20, 2018. Atty. Warner anticipates commencing the application officially at the January 10, 2019 meeting. Atty. Warner said that James Mantz and Robert Fallon were in attendance. Mr. Warner said applicant would like to address what Mr. Clerico and the Board needs prior to the commencement of the Hearing.

Mr. Ford noted that Mr. Mantz submitted a lengthy letter dated December 14, 2018, and that the Board requires that submissions be received twenty-one days prior to a Hearing. Atty. Warner asked what additional information Mr. Clerico and Ms. Malcolm need from Mr. Mantz. Mr. Clerico said most items were of a technical nature. He referenced the intersection with the Elementary School and noted that UTEC recommended a traffic study. Mr. Mantz said that Gary Dean had done some traffic counts. Mr. Clerico mentioned the wastewater system which he understood was the one approved as part of a prior application. He said that system had six septic beds. Mr. Mantz said two of the beds could not be used now because of current riparian buffer requirements. Mr. Kirkpatrick said the system requires approval by a third party. Mr. Kirkpatrick said Mr. Clerico had said storm water management is a critical item and groundwater recharge is a component of storm water management. He asked if sufficient information had been submitted to determine if the detention basins would infiltrate as anticipated. Mr. Clerico indicated that some testing should be provided. Mr. Mantz said soil logs and permeability tests had

been done in 1999. Mr. Clerico said it is the Board's responsibility to evaluate and assess what they understand are the State Regulations. Mr. Clerico said wastewater is governed by the State.

Mr. Clerico referenced classification of street, parking garages and RSIS Criteria. Ms. Malcolm mentioned tree calculations. Mr. Kirkpatrick noted there is basic field information that has not been collected and could change the layout.

Atty. Anderson referenced the twenty-one day requirement for additional submissions and that January 10, 2019 is three weeks from today. Atty. Warner asked for a relaxation of that policy. Mr. Kirkpatrick suggested that Board Professionals evaluate the volume of material and issue a determination as to whether or not they have enough time to review those submissions. Applicant was receptive to that suggestion. Atty. Warner asked that the application be carried until January 10, 2019. Mr. Ford said there was one other agenda item; however, at least one hour would be allotted to the Fallone Group.

Atty. Anderson asked to clarify what if anything was being asked of applicant regarding a traffic study. Mr. Kirkpatrick said they are required to comply with UTEC's request. Mr. Ford emphasized the concern about the driveway across from the Elementary School. He said Perryville Road might need to be widened in front of the subject property. Mr. Mantz said they are addressing those issues.

Mr. Ford asked for a motion to carry the matter until January 10, 2019.

Motion: Mr. Eschbach made a motion to carry Fallone Group to January 10, 2019. Mr. Walchuk seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Comments from the Public/Other Discussion: Tracy Horvath, 156 Perryville Road, mentioned the drainage issue and the potential impact from the site on her property. Ms. Horvath was advised to attend the Public Hearing at which time her concerns would be addressed.

Mr. Ford asked for a motion to adjourn. He noted that Mr. Walchuk would not be on the Board next year. He thanked him for serving on the Board for many years.

Motion: Mr. Walchuk made a motion to adjourn. Mr. Nace seconded the motion. (10:27 p.m.)

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary